

AMENDMENT AND RESPONSE TO OFFICE ACTION  
U.S. Serial No.: 09/783,354  
Title: Orthogonally Ambiguous Carpet Tile

### REMARKS

This Amendment and Response amends claim 1 and cancels claims 20, 32-39, 46, and 48 without prejudice to the right to pursue these cancelled claims in another application.

With this Amendment and Response, claims 1-19, 21-24, 27-30, 40-45, and 47 are pending in this application. The undersigned attorney believes that no fees are due; however, the Patent Office is authorized to debit deposit account 11-0855 if it determines otherwise.

The January 23, 2003 Office Action rejects all claims by reference to U.S. Patent No. 3,875,716 to Eusemann. However, critical aspects of the assertions about Eusemann set forth in the Action simply are not correct, with the result that Eusemann neither anticipates by itself nor in combination with other references renders obvious the claimed subject matter of this application. This Amendment and Response is intended clarify Applicants' invention as well as the Eusemann reference, thereby making the novelty and nonobvious of Applicants' invention abundantly clear.

#### **I. Request for Entry of this Amendment after Final**

Applicants' assignee respectfully maintains that entry of this Amendment and Response after final rejection is proper because there is no basis for the Examiner to refuse entry thereof.

No additional claims have been added to this application. Instead, a number of claims have been cancelled without prejudice.

No new issues requiring further consideration and/or search are presented by the amendment to claim 1. Instead, claim 1 has been amended in a way that overcomes the § 112 rejection and places the case in obvious condition for allowance or in materially better

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form for appeal since a ground of rejection is obviated by the amendment. Claim 1, prior to the present amendment, recited "[c]arpet tiles . . . that exhibit orthogonal ambiguity without *pattern alignment* between *adjacent tiles*." Thus, implicit in claim 1 was that the carpet tiles have patterns and are positioned adjacent each other. Claim 1 has been amended herein to recite positively these features that were already present, albeit implicitly, in claim 1. The failure of the amendment to claim 1 to raise new issues that require further consideration or a new search is clearly demonstrated by the Examiner's prior search for and citation of patterned carpet tiles positioned adjacent to and abutting each other. *See, e.g.*, U.S. Patent No. 6,203,879 to Desai; U.S. Patent No. 3,875,716 to Eusemann. Thus, the search performed by the Examiner thoroughly covered the subject matter of claim 1 as amended in this Amendment and Response.

Moreover, these minor amendments to claim 1 to overcome the § 112 rejection do not raise the issue of new matter. These features, patterned tiles and adjacent and abutting positioning of tiles, do not constitute new matter, but rather are fully supported by the Application. *See, e.g.*, FIGS. 2 and 3.

The subject matter of Applicants' application, orthogonally ambiguous carpet tiles, while having completely revolutionized the carpet tile industry, is admittedly something never seen or described before and therefore (while clearly described in the Application) may be a concept somewhat difficult to understand at first glance. The art relied upon by the Patent Office thus far during prosecution suggests this inference. Thus, the primary purpose of this Amendment and Response is to explain both Applicants' invention and the teachings of Eusemann, as well as distinguish Applicants' invention from those teachings. Applicants'

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assignee is hopeful that the discussion provided herein will clearly explain the Eusemann reference and that the Examiner will enter this Amendment and Response to afford Applicants examination of this application with a clear understanding of the invention and the teachings of the cited references, since it appears to Applicants that, to this point, the Patent Office has not understood the invention with sufficient clarity to provide a meaningful and complete examination of Applicants' claims.

Before addressing the Action's rejections in detail, it is worthwhile briefly to review the subject matter of Applicants' invention.

## **II. The Claimed Invention**

As was noted in Applicants' July 29, 2002 Amendment and Response, the prior art recognizes problems associated with installation of conventional carpet tiles. For instance, as prior art U.S. Patent No. 6,203,879 to Desai explains:

consumers require the installed tiles to have a monolithic look. Consumers expect the finished product to have a seamless, uniform appearance similar to broadloom carpet. Further, an individual installing tiles with a face pattern must carefully orient the tiles to avoid a zippering effect otherwise caused by having offset or overlapping design patterns.

Desai, col. 1, ll. 28-34.

At least virtually all carpet tiles having a textile pile face have a nap that makes differences in the orientation of abutting tiles discernable even in single-color tiles having no pattern on the tile faces. Desai explains that a "pile direction" "represent[s], for example with carpet tiles, the direction that the yarn leans as a result of manufacturing." Desai, col. 4, ll. 28-30.

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In addition to nap, many tiles exhibit a tile pattern. Great care must be given during installation to orient the tiles relative to each other so that their individual patterns coordinate to achieve the desired overall appearance for the installation. The present application explains in describing the prior art:

not only must the patterns of adjacent tiles be aligned, adjacent tiles must be placed so that the nap is oriented in the same direction, and it is frequently necessary to insure that adjacent tiles, and sometimes all tiles in a particular installation, were dyed or have fiber dyed at the same time. If one carpet tile in an installation is oriented improperly with respect to adjacent carpet tiles, it is usually readily apparent that the tile has been misplaced, thereby destroying the appearance of continuity of pattern, nap, and color of the entire carpet tile installation.

Specification page 2, lines 1-7 (emphasis added).

The present invention addresses these problems associated with carpet tile installation by producing tiles that will look "right" without regard to pile direction or nap and rotational orientation or positional location (i.e., pattern alignment) relative to other such tiles and thus overcomes these limiting characteristics. This groundbreaking achievement is accomplished, as the application explains in detail, by placing a pattern on the face of the tile that visually masks differences in pile direction and that does not look "out of place" in any of the four possible orthogonal tile orientations or in any tile position within the tile assembly.

Applicants described their invention in part by stating that the tiles of their invention "exhibit orthogonal ambiguity." As noted in a previous amendment and response, applicants defined the term "orthogonal ambiguity" to mean:

that tiles may be laid in any side-by-side orientation with respect to adjacent tiles without looking out of place to the ordinary viewer and thereby still achieving an appearance of continuity across the entire installation as if the tiles were part of a broadloom web.

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Specification page 2, lines 14-17 (emphasis added). This novel characteristic, orthogonal ambiguity, therefore eliminates the time-consuming and tedious task of carefully orienting carpet tiles with respect to (among other things) nap and pattern while still achieving the appearance of a broadloom installation. Thus, with orthogonally ambiguous carpet tiles, the nap on adjacent tiles can be, but does not need not be, oriented in the same direction. Nor must the patterns on adjacent tiles be matched or aligned in an attempt to disguise the seams of adjacent tiles and thereby create the appearance of a broadloom installation. Rather, each tile's installation is completely independent of that of adjacent tiles, thereby vastly simplifying and expediting the installation process by reducing the time and quantity of labor required and facilitating the replacement of damaged or stained tiles.

### III. U.S. Patent No. 3,875,716 to Eusemann

The outstanding Office Action rejects all claims by reference to Eusemann,<sup>1</sup> with the assertion that "Eusemann discloses carpet tiles comprising textile faces . . . that exhibit orthogonal ambiguity (figure 5 and 6) without pattern alignment between adjacent tiles (col. 2 lines 49-54)." Action, p. 2.

#### A. The Eusemann Tiles Do Not Exhibit Orthogonal Ambiguity

Eusemann discloses carpet tiles with textile faces, including tufted textile faces as asserted by the Office Action. The Eusemann tiles do not exhibit orthogonal ambiguity, however, for at least the reason that nothing in Eusemann establishes, much less even suggests, that the tiles disclosed in Eusemann have face nap or pile direction that is not

<sup>1</sup> Claims 1-3, 5-10, 21, 27, 28, 32, 34-40, 45, 46, and 48 were rejected under 35 U.S.C. § 102 as anticipated by Eusemann, and claims 11-20, 22-24, 29, 30, 33-44, and 47 were rejected under 35 U.S.C. § 103 as unpatentable over Eusemann in view of Hamilton et al.

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discernable when the tiles of Eusemann are assembled with different pile directions. Moreover, nothing in Eusemann teaches or suggests techniques for avoiding discernable differences in pile directions. Rather, this subject is not discussed at all. Accordingly, the Eusemann tiles do not exhibit orthogonal ambiguity for at least this reason.

**B. Eusemann Teaches Pattern Alignment Between Adjacent, Abutting Tiles**

Eusemann does **not** disclose "carpet tiles comprising textile faces (col. 1 line 7) that exhibit orthogonal ambiguity (figure 5 and 6) without pattern alignment between adjacent tiles (col. 2 lines 49-54)." Action, p. 2 (emphasis added). This is the case in part because Eusemann does not disclose carpet tiles without pattern alignment between adjacent, abutting tiles.

In fact, the entire point of Eusemann is to create tiles with designs that ensure that pattern matching occurs between abutting tiles no matter how abutting tiles are oriented. Eusemann generally teaches accomplishing this by subdividing each tile edge into equally-spaced zones. Eusemann, col. 1, ll. 32-37 ("According to the present invention, there is provided a tile having a surface structure wherein each lateral edge is subdivided by colored zones into sections of equal lengths and/or multiples thereof . . ."). Thus, when the tiles are abuttingly positioned, each zone on a tile edge matches up and connects with a corresponding zone (which can be either the same or a different color) on an adjacent tile edge. Eusemann explains this general concept:

The square tile, having a size of, for example, 40 X 40 cm., is constructed so that one of the four lateral edges fits optically to itself and to each of the other three edges. In other words, no matter how the tile is rotated during assembly (by 0°, 90°, 180°, or 270°), the surface always finds an optical connection – even though in each case with an entirely different

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overlapping and expanding pattern total effect. This feature is based on the specifically synchronized type of a figurative asymmetry. In the connection, patterns of various configurational character are possible, namely strictly geometric as well as random-like patterns. These, in turn, can be made to be not only matching but also to be combinable among one another with respect to color and form. Of course, plain unpatterned tiles can also be additionally included. The possibilities of surface structure by means of this tile system are variegated, for example:

\* \* \* \* \*

e. scattered laying, i.e., a completely irregular laying of the tiles, which can, however, be based on system considerations in correspondence with the preceding types. This type of installation is entirely foolproof, because it can be executed by persons lacking in artistic talent with respect to a desired pattern.

Eusemann, col. 2, ll. 19-36 and 49-54.

Thus, the tile designs disclosed in Eusemann insure that there is pattern matching, which the Eusemann patent refers to as "an optical connection," from one tile to any abutting tile:

no matter how the tile is rotated during assembly (by 0°, 90°, 180°, or 270°), the surface always finds an optical connection – even though in each case with an entirely different overlapping and expanding pattern total effect. This feature is based on the specifically synchronized type of a figurative asymmetry.

*Id.*; see also Eusemann, col. 1, lines 35-37 ("each of the four lateral edges of the tile provides a different connection to the pattern of tiles"); Eusemann, col. 1, lines 43-56 ("When utilizing the square shape, each of the sides of the square forms with respect to itself and to the other three sides optically a formally logical junction. . . .

Accordingly, it is possible by means of the tile of the present invention to attain

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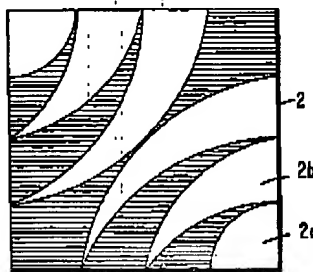
overlapping and continuous outlines in the pattern essentially without need for a sense for design.”) (emphasis added).

Eusemann discloses three different tile embodiments (Figures 1, 4, and 7), each having tile edges divided into equally-spaced zones. Because the underlying design principles are the same for all three tiles, a discussion of the tile of Figure 4 is representative of the other disclosed embodiments. Eusemann explains that in the tile of Figure 4:

the tile surface is subdivided into crescent-shaped zones 2b with quadrant areas 2a in opposite corners by means of quadrant arcs. The subdivision is effected in such a manner that the lateral edges are each subdivided into four equally long color sections, wherein each lateral edge exhibits a different pattern transition. . . . the tile 2 serves for providing a great variety of motion-oriented patterns which can be continued into closed patterns, as well as directionally oriented patterns, and also patterns open on all sides as shown in the assembly patterns of FIGS. 5 and 6.

Eusemann, col. 3, ll. 52-68.

**FIG. 4**



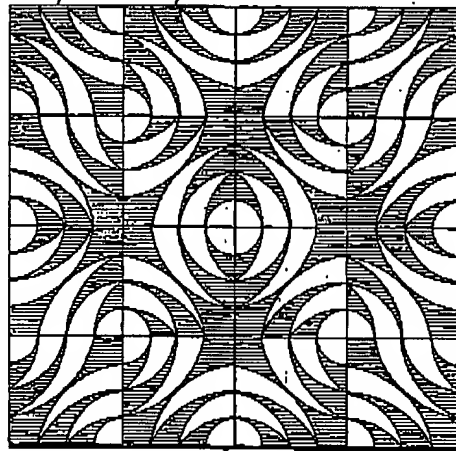
As a result, when the Eusemann tile 2 is positioned side by side with a like-patterned tile,<sup>2</sup> there is always pattern matching between a light area like 2b and 2a and an immediately adjacent light area of the same width on the abutting tile or an immediately adjacent dark

<sup>2</sup> If the Eusemann tiles of Figure 4 are assembled with plain unpatterned tiles (Eusemann, col. 2, l. 33) or with tiles having a different pattern so that the patterns of adjacent tiles did not align, the assembly still would not result in the subject matter of claim 1 because the tiles would not “exhibit orthogonal ambiguity.” Rather, the seams between adjacent tiles would be very apparent, thereby preventing any appearance of continuity across the installation.

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area of the same width on the abutting tile. Figure 5 illustrates one possible assembly of the tiles of Figure 4 and well illustrates this pattern matching between adjacent Eusemann tiles. There is matching of regions or zones of equal width across abutting tiles in any side-by-side orientation.

**FIG 5**



The Action cites the following language from Eusemann as teaching "without pattern alignment between adjacent tiles":

e. scattered laying, i.e., a completely irregular laying of the tiles, which can, however, be based on system considerations in correspondence with the preceding types. This type of installation is entirely foolproof, because it can be executed by persons lacking in artistic talent with respect to a desired pattern.

Eusemann, col. 2, ll. 49-54. Eusemann does not make clear exactly what is meant by "a completely irregular laying of tiles." This phrase could be interpreted in three ways:

- (1) that the tiles are literally laid on the floor randomly, not necessarily abutting so that there are gaps between tiles;
- (2) that the tiles are laid on the floor so that they are abutting but they are not positioned in aligned rows and aligned columns; or

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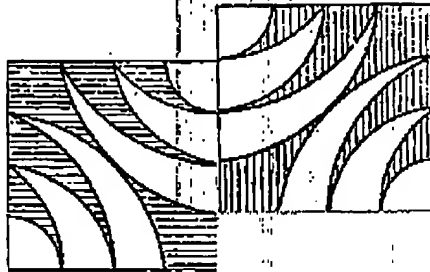
(3) that the tiles are laid on the floor abutting and in aligned rows and aligned columns but their rotational positions and their positions in the assembly are entirely random.

Applicants' assignee does not believe that interpretation (1) is the intended meaning because placement of the tiles so that gaps are formed between adjacent tiles would entirely thwart Eusemann's purpose of creating a continuous floorcovering with tiles. Moreover, nor would such an installation result in carpet tiles exhibiting "orthogonal ambiguity" (as recited in claim 1) at least because the individual tiles would be readily discernible thereby preventing an appearance of continuity across the installation.

Interpretation (2) contemplates that the tiles be positioned in abutment and in rows and columns. However, both the rows and the columns are not aligned. For example, the tiles may be installed so that a column of tiles appears shifted up or down relative to adjacent tile columns to prevent formation of aligned rows ("the ashlar installation method"). Similarly, the tiles may be installed using the brick-laid installation method whereby rows of carpet tiles are aligned, but the rows are staggered relative to each other to prevent formation of aligned columns.

Eusemann arguably suggests these installation methods when it discloses that "it is also possible to join the tile laterally to the adjacent tile in a manner offset by one or more subdivisions *such that the formally logical connection in the pattern is accomplished.*" Eusemann, col. 1, ll. 47-49. Thus, Eusemann contemplates offsetting the tiles by an even multiple of the subdivisions (or zones) along the tile edges so that the zone of one tile edge still aligns with the zone of an adjacent tile, as illustrated in Figure A:

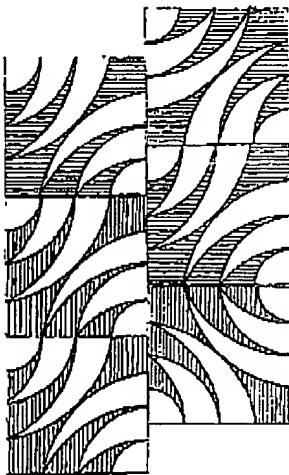
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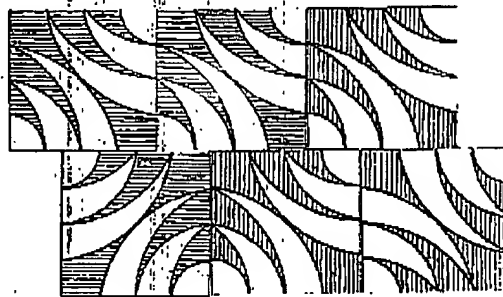
**FIG. A**

The above-italicized language from Eusemann as well as Figure A clearly evidence that pattern alignment is still intended to result and will indeed result with such offset laying.

Moreover, even if, in an attempt to prevent alignment between zones of adjacent tiles, the Eusemann tiles are laid so that they are offset by a non-integer multiple of the tile edge zones (which, by the way, Eusemann does not teach or suggest), pattern matching still results, as demonstrated by the following figures. Figures B and C respectively illustrate Eusemann tiles positioned in accordance with the ashlar installation method and the brick-laid installation:



**FIG. B**



**FIG. C**

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In Figure B, the tiles are positioned in aligned columns, but not in aligned rows. Moreover, the tiles between adjacent columns have been intentionally offset so that a zone of one tile edge does not align with a zone of an abutting tile in the adjacent column. However, even with this intentional pattern misalignment between tiles in adjacent columns, pattern alignment still results between the tiles *within* a column. Moreover, tiles of such an installation would not exhibit "orthogonal ambiguity" because the misaligned patterns between tiles of adjacent columns would betray the tile edges, preventing the appearance of continuity across the installation.

Similarly, Figure C illustrates tiles positioned in aligned rows, but not in aligned columns, and with tiles in one row intentionally offset from tiles in an adjacent row so that the zones do not align between rows. Note, however, that pattern alignment still results between the tiles *within* a row and that the obvious misaligned patterns between tiles of adjacent rows prevent the tiles from exhibiting orthogonal ambiguity.

In fact, there is no way to position identical Eusemann tiles<sup>3</sup> in abutment so that they create a floorcovering without resulting pattern alignment. Thus, even if interpretation (2) were correct, Eusemann would still not teach or suggest the subject matter of claim 1 because such an installation of Eusemann tiles would always result in pattern alignment.

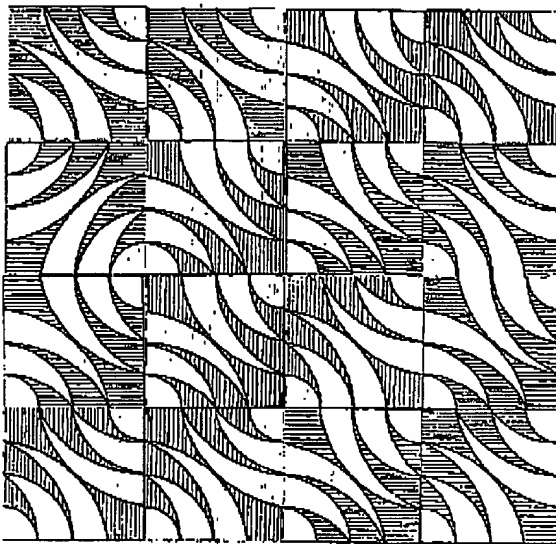
Applicants' assignee believes that Eusemann's disclosure of "a completely irregular laying of tiles" is properly interpreted to teach positioning tiles abutting and in aligned rows and aligned columns without regard to the rotational positions of the tiles relative to each other and without regard to the relative positions of the tiles in the assembly (i.e.,

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<sup>3</sup> See *supra* note 2.

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interpretation (3)).<sup>4</sup> However, even when Eusemann tiles are laid in this way, pattern alignment between adjacent tiles is inevitable. This is best illustrated by the “completely irregular laying of the tiles” reproduced below, in which Eusemann tiles 2 of Figure 4 have been randomly positioned without regard to their rotational orientation or position of the tiles in the assembly.



**FIG. D**

While the tiles have been installed by “scattered laying, i.e., a completely irregular laying of the tiles,” the resultant assembly still results in pattern matching between adjacent tiles. In fact, no matter how like Eusemann tiles are laid, the patterns (i.e., the tile edge zones) will always align with those of adjacent tiles. This is the entire purpose of the designs disclosed in the Eusemann patent, a purpose which is only reinforced by the British

<sup>4</sup> Such an interpretation is supported by the British counterpart to the Eusemann patent, GB 1 404 337 (the “British patent”), attached as Exhibit A. The British patent explains that “[m]ixed laying of tiles of the same design and colour distribution can also be effected with irregular turning, or with scattering, that is to say, completely irregular laying in two dimensions . . .” British patent, p. 3, ll. 50-54. This confirms that paragraph (e) in Eusemann refers to laying tiles having the same design and color randomly in an assembly, i.e. in any rotational orientation or in any location in the assembly.

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counterpart to the Eusemann patent, GB 1,404,337 (the "British patent") which explains that the Eusemann tiles are laid "to obtain visually acceptable continuously repeating patterns in all directions." British patent, p. 3, ll. 50-58. Consequently, the "scattered laying, i.e., completely irregular laying of the tiles . . . is entirely foolproof, because it can be executed by persons lacking in artistic talent with respect to a desired pattern" (Eusemann, col. 2, ll. 49-54) **not** because the Eusemann tiles exhibit orthogonal ambiguity and there is no pattern alignment between adjacent tiles, but rather because **there is pattern alignment between adjacent tiles no matter how adjacent tiles are oriented relative to each other.** This is precisely what is excluded by the limitation "without pattern alignment between adjacent tiles" in pending claim 1.

#### IV. Claim Rejections

##### A. 35 U.S.C. § 102

The Action rejects claims 1-3, 5-10, 21, 27, 28, 32, 34-40, 45, 46, and 48 under 35 U.S.C. § 102 as anticipated by Eusemann. Applicants' assignee respectfully traverses this rejection and requests reconsideration and withdrawal thereof. Claims 32, 34-39, 46, and 48 have been cancelled without prejudice, and therefore the Action's rejection of these claims is moot. At least because Eusemann fails to teach carpet tiles that "exhibit orthogonal ambiguity" (*see supra* Part III.A.) or abutting tiles "without pattern alignment between adjacent tiles" (*see supra* Part III.B.), it does not anticipate claim 1 or any of the claims that depend directly or indirectly from claim 1 (claims 2-19, 21-24, 27-30, 40-45).

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**B. 35 U.S.C. § 103**

The Action rejects claims 11-20, 22-24, 29, 30, 33-44, and 47 under 35 U.S.C. § 103 as unpatentable over Eusemann in view of Hamilton et al. Applicants' assignee respectfully traverses this rejection and requests reconsideration and withdrawal thereof. Claims 20 and 33-39 have been cancelled without prejudice, and therefore the Action's rejection of these claims is moot. Moreover, claims 11-19, 22-24, 29, 30, and 40-44 are allowable at least by virtue of their dependence from allowable claim 1.

Moreover, claim 47 recites an assembly of carpet tiles that each have a textile face pattern that is not identical to any other tile in the assembly and that can be assembled to appear continuous across the assembly so that no tile looks out of place or out of position in any place or position in the assembly. The Action acknowledges that Eusemann fails to teach or suggest tiles having a pattern nonidentical to any other tile in the assembly. Action, p. 7. But the Action fails to identify any disclosure in Hamilton et al. that teaches such a feature. While Hamilton et al. teaches "pattern-tufted" tiles (Hamilton et al., col. 2, l. 29), it provides no discussion of the patterns on the tiles, much less that the patterns are nonidentical.

The Action merely concludes that "[i]t would have been an obvious matter of design choice . . . for each of the [Eusemann] tiles to comprise a pattern not identical to any other tile of the assembly since it is known in the art that size and colors may be modified to meet the consumer's desired pattern absence of showing unexpected results." Action, p. 9. The overarching theme of Eusemann, as clearly evidenced by Figures 2, 3, 5, and 6, is to assemble identical tiles so that "overlapping patterns can be produced [between the tiles],

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which patterns conceal the character of the individual component." Eusemann, col. 1, ll. 29-31. Thus, Eusemann is primarily concerned with assembling like tiles to conceal the fact that modules are present. To do this, Eusemann requires pattern matching between the tiles, as discussed *supra* Part III.B.

However, even assuming, *arguendo*, that one of skill in the art would be motivated to create an assembly of Eusemann tiles having nonidentical patterns, to do so would destroy any possible concealment of the tile seams. Thus, even if one were to create such an assembly, the tiles in the assembly would not appear "continuous across the assembly," as recited in claim 47. Rather, every tile would look out of place or out of position in the assembly because the seams between the nonidentical tiles would be extremely prominent. Thus, even if, as the Action alleges, it would be obvious to assemble nonidentical Eusemann tiles (which applicants' assignee believes it would not be), to do so would still not result in the subject matter recited in claim 47. Claim 47 is therefore allowable.

C. 35 U.S.C. § 112

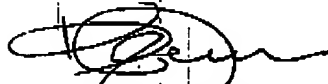
The Action rejects claim 1 under 35 U.S.C. § 112 as lacking antecedent basis for "adjacent tiles." Claim 1 has been amended to provide the necessary antecedent basis for "adjacent tiles." Applicants' assignee respectfully requests reconsideration and withdrawal of this rejection.

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### CONCLUSION

Applicants respectfully submit that claims 1-19, 21-24, 27-30, 40-45, and 47 condition for immediate allowance, and request early notification to that effect.

Respectfully submitted,



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**Marked-up copy of amended claims pursuant to 37 C.F.R. § 1.121(c)**

1. (Thrice Amended) Carpet tiles comprising textile faces having patterns, wherein,  
when the tiles are assembled on a flooring surface so that each tile is adjacent to and abuts at  
least one other tile, the textile faces exhibit orthogonal ambiguity without pattern alignment  
between adjacent tiles.